

United States District Court  
District of Massachusetts

United States of America )  
v. )  
Derek Rego, )  
Defendant. )  
Criminal Action No.  
20-cr-10194

## MEMORANDUM & ORDER

**GORTON, J.**

Pending before this Court is defendant Derek Rego's motion to dismiss the indictment under Fed. R. Crim. P. 12(b) (3) (B) (v) (Docket No. 94). The indictment charges defendant with a single count of escape, in violation of 18 U.S.C. § 751(a). Defendant claims that the indictment fails to state an offense because he did not knowingly leave the custody of the Attorney General without permission. According to defendant, that undisputed fact undermines a necessary element of the charged offense.

Defendant's motion will be denied. When faced with a Rule 12(b)(3)(B)(v) motion,

the question is not whether the government has presented enough evidence to support the charge, but solely whether the allegations in the indictment are sufficient to apprise the defendant of the charged offense.

United States v. Brissette, 919 F.3d 670, 675 (1st Cir. 2019) (quoting United States v. Savarese, 686 F.3d 1, 7 (1st Cir. 2012)). Accordingly, the motion does not permit a defendant "to test the sufficiency of the evidence behind the indictment's allegations." United States v. Guerrier, 669 F.3d 1, 4 (1st Cir. 2011).

Defendant's motion challenges the facts alleged in the indictment but those facts must be considered by a jury, not a judge. At this stage, the indictment properly alleges that defendant knowingly escaped from the custody of the Attorney General and therefore sufficiently apprises defendant of his charged conduct. See id.

Defendant separately argues that the indictment should be dismissed because the dates provided therein do not align with his estimation of the alleged underlying criminal conduct. That argument must also be rejected because the allegation of time in the indictment does not negate any essential element of the charged offense, i.e., generality is permitted. See, e.g., United States v. Nunez, 668 F.2d 10, 12 (1st Cir. 1981).

ORDER

For the foregoing reasons, defendant's motion to dismiss the indictment (Docket No. 94) is DENIED.

So ordered.

  
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Nathaniel M. Gorton  
United States District Judge

Dated: June 25, 2024